

May 14, 1993
REPORT TO THE COMMITTEE
ON PUBLIC SERVICES AND SAFETY

ESTABLISHING A HOMELESS SHELTER IN BALBOA PARK

You recently requested a legal opinion as to the legality of providing a temporary shelter for homeless persons in a portion of Balboa Park.

Balboa Park is a dedicated public park and under Section 55 of the City's Charter may be used only for park and recreation purposes. To use dedicated park land for other than a park and recreation purpose would, under section 55, require a two-thirds vote of the electorate approving such nonpark use.

Private residential use is not a proper use of dedicated park land. *Passaic v. State*, 33 N.J. Super 37, 109 A.2d 294. Therefore, any proposal to use a portion of Balboa Park for private residential use to accommodate otherwise homeless persons would normally require a two-thirds vote of approval by the electorate.

Our understanding is, however, that you feel that the present lack of adequate shelter for homeless persons in San Diego may constitute an "emergency" situation justifying extraordinary action by the City Council.

Section 17 of the City Charter authorizes the City Council to adopt an emergency ordinance in order "to provide for the immediate preservation of the public peace, property, health, or safety, in which the emergency claimed is set forth and defined" in the ordinance. Section 17 further states "no situation shall be declared an emergency by the Council except as defined in this section, and it is the intention of this Charter that compliance with such definition shall be strictly construed by the courts." Section 17 requires a two-thirds vote by the City Council for passage of any emergency ordinance.

Providing temporary shelter for homeless persons in public parks has occurred in the past in emergency situations. For example, after the 1906 San Francisco earthquake housing facilities were established in various parks and public areas in San Francisco to accommodate homeless persons until housing could be reconstructed. Also, after World War II thousands of war veterans returned to the Los Angeles area and, as there was no

housing available to accommodate the veterans, the city allowed temporary housing facilities for the veterans to be established in Griffith Park. The action of the council was challenged and in the case of Griffith v. City of Los Angeles, 78 Cal.2d 796 (1947) the court decided that the housing facilities in the park were justified on the basis that an emergency situation existed and that the use was "temporary." Similarly, in the case of Hyland v. City of Eugene, 179 Or. 567 (1946) the court upheld a temporary veteran housing project in a park in Oregon on the basis of an emergency resulting from an acute housing shortage with the additional condition that the temporary use not "substantially or materially interfere" with the public's use of the park.

It is our opinion that, in the absence of a two-thirds vote of the electorate, establishing a homeless shelter in Balboa Park can be legally justified only if there are substantial and relevant facts to support a finding by the City Council that an emergency situation exists and that it is, therefore, necessary to establish such a shelter in order to protect the public health or safety in accordance with Charter Section 17. In addition, it would be necessary to also show that the proposed use would be "temporary" rather than permanent.

While the word "temporary" is obviously somewhat ambiguous, we note that in both the Griffith case and the Hyland case the proposed "temporary" use upheld by the courts was approximately three years.

If substantial and relevant facts exist to support such a finding by the Council and there is a clear indication that the use will be temporary only, pending some permanent solution to the homeless problem, we feel that a court would uphold a decision of the City Council to establish a temporary shelter for homeless persons in the park.

Respectfully submitted,

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